

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 28, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 366, HB 304, HB 284, HB 287,
1/19/2005
Executive Action: HB 100-Do Pass As Amended, HB 46-Do
Pass As Amended

HEARING ON HB 284

Sponsor: REP. RAY HAWK, HD 90, FLORENCE

Opening Statement by Sponsor:

REP. RAY HAWK (R), HD 90, opened the hearing on HB 284, Sheriff must authorize federal employee arrest, search, or seizure. He stated that this bill will be facilitate cooperation between the Sheriff's Department and U.S. Federal agents.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 73}

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, rose in support of HB 284. He informed the committee members this is not a new bill; in the 1995 Legislature this bill was passed but vetoed by then Governor Racicot. The bill was re-introduced in 1997 with the governor again stating that the bill would be vetoed, however, it failed in committee.

Mr. Marbut spoke of previous incidents that have happened where the U.S. Federal agents have usurped the local authorities' command. He spoke also of the Waco, Texas, incident; Ruby Ridge, Idaho, and Ravalli County where similar incidents have happened.

{Tape: 1; Side: A; Approx. Time Counter: 73 - 214}

Doug Nulle, self, rose in support of HB 284 and stated, "...this bill would prevent tragic incidents like Waco happening again."

{Tape: 1; Side: A; Approx. Time Counter: 214 - 222}

Don Doig, self, spoke to committee about the fact that in his opinion that federal agencies have grown abusive and arrogant.

{Tape: 1; Side: A; Approx. Time Counter: 222 - 238}

Frank Shook, self, spoke for the bill and for the "sovereignty and freedom of Montana."

{Tape: 1; Side: A; Approx. Time Counter: 238 - 248}

Opponents' Testimony:

Jim Smith, Montana Sheriffs and Peace Officers Association, stated that he rose as a reluctant opponent. **Mr. Smith** spoke to the committee about former Sheriff Chuck O'Reilly and the incident with the "Unabomber" that Mr. Marbut had spoken about earlier.

Mr. Smith was of the opinion that to coordinate a local sheriff department and the U.S. Federal agents is not something that cannot be legislated.

{Tape: 1; Side: A; Approx. Time Counter: 248 - 310}

Jim Kembel, Montana Chiefs of Police, stated that he had "grave" concerns about this bill in reference to Page 2, "New Section 3."

{Tape: 1; Side: A; Approx. Time Counter: 310 - 318}

Cheryl Leidle, Lewis and Clark Sheriff, Montana Sheriffs and Peace Officers Association, rose in opposition to HB 284 and reiterated that cooperation between local authorities and federal agencies cannot be legislated. **Sheriff Leidle** stated that the "penalty phase" language in HB 284 is of the most concern to her.

{Tape: 1; Side: A; Approx. Time Counter: 318 - 358}

Bill Fleinner, Department of Corrections (DOC), rose to oppose HB 284. He referred to the 4C's that former Sheriff Chuck O'Reilly would incorporate into daily duties, they are: command, control, communicate and cooperation.

{Tape: 1; Side: A; Approx. Time Counter: 358 - 375}

Travis McAdam, Montana Human Rights Network, stated to the committee that bill is, "...militia men repackaged...." **Mr. McAdam** spoke to the committee about the previous problems in Montana with the "Posse Comattatis," a militia group in Montana, the Freeman also in Montana and the Aryan Nations group based in Idaho.

In his opinion, HB 284 would make the local sheriff the most important and powerful official within an county. **Mr. McAdam** also referred to the Oklahoma bombing incident as an example of outside "the main stream" politics and that the threat still exists for another such tragedy.

EXHIBIT(juh22a01)

{Tape: 1; Side: A; Approx. Time Counter: 375 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 21}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. STOKER questioned Mr. Marbut about the impact that would happen on tribal lands and how would this bill be applied. **Mr. Marbut** replied that he was uncertain of what the effect would be.

REP. EVERETT asked Mr. Marbut just one question, "Is the Montana Shooting Sports Association a radical group?" **Mr. Marbut** responded with the answer, "No."

REP. NOONAN posed his questions to Mr. Marbut. The REPRESENTATIVE was interested in how this legislative measure would be enforced; and how, if the federal agents were somehow charged with official misconduct, would the local authorities inherit the problem.

REP. WARD followed-up with questions to Sheriff Leidle. He inquired whether or not the current local authorities had a co-operative relationship with federal agents. **Sheriff Leidle** responded in the affirmative and stated again that, "You cannot legislate cooperation."

REP. MCGILLVRAY continued with questions to Sheriff Leidle. He spoke about an amendment that would remove certain language in the bill removing the "specific mandate." **Sheriff Leidle** replied that she would be amenable to that amendment.

REP. NOONAN turned to Mr. Smith for his questions. He asked Mr. Smith, "...if an incident like Ruby Ridge or Waco happened, and the local sheriff had given approval, would that sheriff be laible if there was a lawsuit?" **Mr. Smith** stated, "Yes, the sheriff could be a victim of a lawsuit."

REP. RICE then asked Mr. Marbut to explain the U.S. Supreme Court ruling regarding the "Brady" L aw and how it relates to local authorities.

REP. MCGILLVRAY began his questioning of Mr. McAdam with the question of why Governor Racicot vetoed the previous legislation. He asked if it was for its unconstitutionality. **Mr. McAdam** explained that it was his understanding Governor Racicot had additional concerns about the bill, the unconstitutionality of it and that the bill would be telling the federal government how to perform its duties.

REP. CLARK questioned Mr. Connor (Chief Criminal Prosecutor-Department of Justice) about how the federal agents operate in Montana, and what would occur if the agents "go over the line," and finally, if this bill would be helpful. **Mr. Connor** responded that he had been involved with the Freeman situation in Garfield County and that the U.S. Federal presence was "...beyond belief." He stated to the committee, "The Federal agents will do what they want regardless..." of what is in Montana statute.

REP. CLARK continued his questioning of Mr. Connor regarding the intrusion of federal agents with regard to the Patriot Act. **Mr. Connor** stated that this statute as proposed would pose potential problems with federal authorities in reference to the Patriot Act.

{Tape: 1; Side: B; Approx. Time Counter: 21 - 332}

Closing by Sponsor:

REP. HAWK was absent at the time of closing; however, he had left a handout for the committee's perusal.

EXHIBIT (juh22a02)

{Tape: 1; Side: B; Approx. Time Counter: 332 - 333}

HEARING ON HB 366

Sponsor: **REP. ROGER KOOPMAN, HD 70, BOZEMAN**

Opening Statement by Sponsor:

REP. ROGER KOOPMAN (R), HD 70, opened the hearing on **HB 366**, Exempt firearms made in Montana from federal constitution commerce clause.

REP. KOOPMAN stated, "...with this bill, Montana will make a 'beachhead' to protect state rights."

{Tape: 1; Side: B; Approx. Time Counter: 333 - 462}

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, rose in support of HB 366. He proceeded to inform the committee about the "mom and pop" manufacturers in the Montana that would benefit from this bill.

{Tape: 1; Side: B; Approx. Time Counter: 462 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 38}

Doug Nulle, self, rose in favor of HB 366.

{Tape: 2; Side: A; Approx. Time Counter: 38 - 47}

Don Doig, self, stated to the committee, "...this bill will assert freedom of commerce and will help protect freedom's rights."

{Tape: 2; Side: A; Approx. Time Counter: 47 - 55}

Franklin Shook, self, spoke to the committee about friends that he has in school that are learning how to manufacture firearms so that they can start a business. He also stated, "The State of Montana needs to remodel the statutes and insert more freedom-minded thinking."

{Tape: 2; Side: A; Approx. Time Counter: 55 - 83}

Opponents' Testimony: None

Informational Testimony:

John Connor, Department of Corrections, explained to the committee members that this bill is not as global as presented. The bill will help establish a "cottage industry" of firearm manufacturers in Montana. **Mr. Connor** did have concerns about Section 7 and the language therein.

{Tape: 2; Side: A; Approx. Time Counter: 83 - 133}

Questions from Committee Members and Responses:

REP. BECKER began her questions to the sponsor. She was interested in the federal regulations regarding the manufacturing of firearms. **REP. KOOPMAN** was able to explain to the committee about the Interstate Commerce regulation.

REP. PARKER queried the sponsor about a fiscal note and whether there would be a big impact. **REP. KOOPMAN** stated that there should be a fiscal note, but didn't think there would be a much of an impact.

REP. CLARK posed his questions to Mr. Marbut about the "Made in Montana" firearms and whether or not they would be regulated by the Brady Law. **Mr. Marbut** informed the committee members that the firearms would not be subject to the Brady Law as the weapons would stay in Montana.

REP. HARRIS continued with questions to the sponsor regarding how the Attorney General's office would be involved with relation to a "declaratory judgement" and if there any precedent or case law that he could refer to for additional information. **REP. KOOPMAN** and **Mr. Marbut** both stated that they could not supply such information.

REP. GUTSCHE questioned Mr. Connor regarding Section 4, in reference to the OSHA requirements. She then proceeded to question the sponsor about the purchase of firearms out of the state or country but stamped with "Made in Montana."

{Tape: 2; Side: A; Approx. Time Counter: 133 - 391}

Closing by Sponsor:

REP. KOOPMAN closed the hearing on HB 366 and again stated that this bill would allow a "cottage industry" to develop in Montana and where federal law may not apply, Montana law would.

{Tape: 2; Side: A; Approx. Time Counter: 391 - 435}

HEARING ON HB 287

Sponsor: REP. BILL WARDEN, HD 63, BOZEMAN

Opening Statement by Sponsor:

REP. BILL WARDEN (R), HD 63, opened the hearing on **HB 287**, Limitations on peace officer authority. The sponsor explained HB 287 as it relates to the Patriot Act.

EXHIBIT (juh22a03)

{Tape: 2; Side: A; Approx. Time Counter: 435 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 90}

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, rose in support of HB 287. **Mr. Marbut** stated to the committee, "Montana cannot repeal the Patriot Act, but Montana can choose not to enforce it." He continued to explain to the committee how Montana's Constitution is involved.

{Tape: 2; Side: B; Approx. Time Counter: 90 - 176}

Doug Nulle, self, rose in support of HB 287.

{Tape: 2; Side: B; Approx. Time Counter: 176 - 179}

Don Doig, self, rose in support of HB 287.

{Tape: 2; Side: B; Approx. Time Counter: 179 - 199}

Cheryl Leidle, Lewis and Clark County Sheriff, rose in support of HB 287. She stated that she did have some questions regarding the New Section as to the section of officers' training.

{Tape: 2; Side: B; Approx. Time Counter: 199 - 220}

Franklin Shook, self, rose in support of HB 287. He stated that he came from, "...the occupied confederate State of Georgia and that sovereignty is first in Montana."

{Tape: 2; Side: B; Approx. Time Counter: 220 - 247}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD posed his questions to Jim Smith, Mayor of Helena, who was seated in the audience. The REPRESENTATIVE was interested in knowing about the resolution for a "Safe and Free Helena" the City of Helena had passed because of the Patriot Act. **Mr. Smith** explained how the City of Helena came to adopt that resolution.

REP. NOONAN then questioned the sponsor about his intent and if it is his intent to repeal the Patriot Act.

REP. PARKER questioned Mr. Marbut about the Federal law, whether or not there is a "compelling state interest" for this bill, and if the officer is mandated to make the "final" call in certain situations.

REP. HARRIS followed up with questions to Mr. Marbut also. The REPRESENTATIVE stated that the bill has serious defects. **REP. HARRIS** is concerned that an officer would have all the burden placed on him and that theoretically, the officer would need to obtain immediate legal advice prior to resolving the situation at hand.

REP. WARD questioned Sheriff Leidle about the training aspect of the bill. **Sheriff Leidle** responded that there is never a guarantee of training; the funds must be made available and funding is always an issue. She continued to say this bill would be, "...setting up officers for tremendous liability."

{Tape: 2; Side: B; Approx. Time Counter: 247 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 130}

Closing by Sponsor:

REP. WARDEN closed the hearing on HB 287 and stated that this bill may need some work but it is a start.

{Tape: 3; Side: A; Approx. Time Counter: 130 - 146}

HEARING ON HB 304

Sponsor: REP. DIANE RICE, HD 71, HARRISON

Opening Statement by Sponsor:

REP. DIANE RICE (R), HD 71, opened the hearing on HB 304, Revise driver's license laws. The sponsor explained the bill as it pertains to eliminating the requirement for a drivers license for off-road vehicles, issuing a drivers license to illegal aliens and allowing the drivers license to be used as a national identification card.

{Tape: 3; Side: A; Approx. Time Counter: 146 - 240}

Proponents' Testimony:

Dean Roberts, Department of Justice-Transportation Division, rose to support HB 304. Mr. Roberts spoke to the illegal alien section. He also stated he has a problem with the language on Page 2, Line 12 and 16.

EXHIBIT(juh22a04)

{Tape: 3; Side: A; Approx. Time Counter: 240 - 326}

Gary Marbut, self, rose in support of HB 304.

{Tape: 3; Side: A; Approx. Time Counter: 326 - 358}

Doug Nulle, self, spoke in support of HB 304. His main focus was that Montana not allow the drivers license to be used as an identity verification as California has done. He reported that Governor Schwarzeneger has repealed that statute.

{Tape: 3; Side: A; Approx. Time Counter: 358 - 397}

Don Doig, self, stated, "...a person needs to have their anonymity."

{Tape: 3; Side: A; Approx. Time Counter: 397 - 418}

Franklin Shook, self, stated that a national identification card is "dangerous to Montanans."

{Tape: 3; Side: A; Approx. Time Counter: 418 - 431}

Brenda Nordlund, Assistant Attorney General-Motor Vehicles Division, informed the committee that she will work on an amendments for Page 2, Page 5, Lines 13-15, Page 2, Line 8-11.

Opponents' Testimony: None

Informational Testimony:

Terry Chute, United States Forest Service (USFS), informed the committee that he just found out the USFS was involved in this bill and he would be available for questions.

EXHIBIT(juh22a05)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 15}

Questions from Committee Members and Responses:

REP. HARRIS started the questions by asking Ms. Nordlund and the sponsor if the section regarding off-road vehicles and the requirement for drivers license falls within the title of the bill. **REP. RICE** stated that each bill may contain only one subject so this may not be proper.

REP. MCGILLVRAY asked **Mr. Roberts** about the documents needed to obtain an drivers license. **Mr. Roberts** explained the different scenarios for a drivers license and also for a identification card.

{Tape: 3; Side: B; Approx. Time Counter: 15 - 75}

Closing by Sponsor:

REP. RICE closed the hearing on HB 304 and asserted that the basic concept is about privacy.

{Tape: 3; Side: B; Approx. Time Counter: 75 - 85}

EXECUTIVE ACTION ON HB 100

Motion: **REP. KOOPMAN** moved that HB 100 DO PASS.

Discussion:

Motion/Vote: **REP. KOOPMAN** moved that HB 100 BE AMENDED with AMENDMENT 100-02. Motion carried 17-1 by voice vote with **REP. LANGE** voting no.

(**REP. LANGE** voted no by proxy vote.)

EXHIBIT(juh22a06)

Motion: **REP. CLARK** moved that HB 100 DO PASS AS AMENDED.

Discussion:

Motion: **REP. CLARK** moved that HB 100 BE AMENDED with AMENDMENT 100-01 as to Section 5 only.

EXHIBIT(juh22a07)

Discussion:

Some of the committee members commented on this amendment; however, no changes were made to change the significance of the amendment.

Vote: Motion carried 15-3 by voice vote with REP. EVERETT, REP. KOOPMAN, and REP. LANGE.
(REP. LANGE voted no by proxy vote.)

Motion/Vote: REP. CLARK moved that HB 100 DO PASS AS AMENDED.
Motion carried 15-3 by voice vote with REP. LANGE, REP. NOONAN, and REP. STOKER voting no.
(REP. LANGE voted no by proxy vote.)
{Tape: 3; Side: B; Approx. Time Counter: 85 - 396}

EXECUTIVE ACTION ON HB 46

Motion: REP. CLARK moved that HB 46 DO PASS.

Discussion:

Motion: REP. NOENNIG moved that HB 46 BE AMENDED with AMENDMENT 46-02.
[EXHIBIT\(juh22a08\)](#)

Discussion:

Mr. MacMaster explained the amendment to the committee with discussion following regarding the amendment and bill.

Vote: Motion carried unanimously by voice vote.
(REP. LANGE voted yes by proxy vote.)

Motion/Vote: REP. PARKER moved that HB 46 DO PASS AS AMENDED.
Motion carried 17-1 by roll call vote with REP. RICE voting no.
(REP. LANGE voted yes by proxy vote.)

ADJOURNMENT

Adjournment: 12:23 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh22aad0.TIF](#))